

EX PARTE OR LATE FILED

CARTER, LEDYARD & MILBURN

COUNSELLORS AT LAW

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114 WEST 47TH STREET  
NEW YORK, N. Y. 10036  
(212) 944-7711

February 14, 1996

BY HAND

Mr. William F. Caton, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED

FEB 14 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

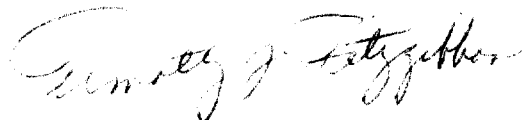
Re: Petition for Reconsideration in  
CC Docket No. 92-115 -- Ex Parte Presentation

Dear Mr. Caton:

This is to provide notice, pursuant to Section 1.1206 of the Commission's Rules, that the enclosed letter and the attachments identified therein, were forwarded today to Chairman Reed Hundt and to each of the other individuals identified at the close of the letter. Each of the recipients also has been provided with a copy of this letter. An original and two copies of this notice and the attachments are being submitted today for inclusion in the above-referenced docket.

If you have any questions regarding this matter, please contact me.

Very truly yours,



Timothy J. Fitzgibbon  
Counsel for  
C-Two Plus Technology

TJF:slf

No. of Copies rec'd  
LH ABCDF

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CARTER, LEDYARD & MILBURN

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BY HAND

Hon. Reed Hundt  
Chairman, Federal Communications Commission  
Suite 814  
1919 M Street, N.W.  
Washington, D.C. 20554

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

Re: Ex Parte Presentation - CC Docket No. 92-115  
C2+ Petition For Reconsideration

Dear Chairman Hundt:

Since December 19, 1994, C-Two-Plus Technology, Inc. ("C2+") has had pending before the Commission a petition for reconsideration of the Commission's Report and Order in Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, 9 FCC Rcd. 6513 (1994). C2+ offers cellular subscribers a service by which they can complete calls from an additional cellular phone that they own -- with charges for all such calls properly billed to their cellular account -- without being required to obtain a second cellular telephone number or to pay an additional recurring monthly subscription charge for the additional phone. In short, C2+ offers a cellular subscriber the same convenience of using an "extension" phone that landline telephone subscribers have enjoyed for years.

Although the Report and Order deals with virtually all rules applicable to cellular mobile services, the C2+ petition focused on: (a) new rule §22.919, which was adopted to "reduce fraudulent use of cellular equipment" resulting from "tampering with" the Electronic Serial Numbers ("ESNs"); and (b) certain specific conclusions made by the Commission in paragraphs 60-62 of the Report and Order that were well beyond the scope of the rulemaking proceeding. For example, the Commission concluded that: (i) cellular carriers are "entitled" to "monthly per telephone revenues" for each cellular telephone in operation; and (ii) "use of C2+ altered cellular [extension] telephones constitutes a violation of the Act and our rules." These conclusions not only are completely devoid of record support in the rulemaking proceeding, they are contrary to prior Commission decisions concerning the right of a telephone subscriber to connect to the telephone network customer owned equipment which is "privately beneficial" to the customer without being "publicly detrimental" to other users or to the network itself.

The Commission essentially has acknowledged that there is no basis in the rulemaking record for these conclusions and for many of the other conclusions in paragraphs 60-62 of the Report and Order. In an Agenda issued by the Wireless Bureau for a meeting which it convened on July 27, 1995 to discuss the issues raised in the C2+ petition, the Bureau characterized paragraphs 60-62 as a "Policy Statement" based on three "assumptions" rather than the record in the rulemaking. The Agenda then solicited information from the participants in the meeting to determine whether there was any factual support for the assumptions. A copy of the Agenda is included as Attachment 1, hereto. The Commission staff also conceded at that meeting that the treatment of C2+ in the Report and Order was "heavy-handed." Certainly, C2+ had no notice that the rulemaking proceeding would include either a judgment of its conduct under the Communications Act or the Commission's former rules, or a determination of the carriers' alleged "entitlement" to a recurring revenue stream in the form of a monthly service charge for each cellular phone in operation. In any event, at the conclusion of the July 27 meeting, the Bureau specifically requested C2+ to submit a proposed rule that would expressly authorize its service. C2+ submitted such a proposed rule on August 10, 1995. At the Bureau's request, the proposed rule was served on the representatives of the cellular carriers that had attended the meeting, but they have never responded.

Instead, despite its serious substantive, procedural and due process deficiencies, the Report and Order has been paraded by the cellular carriers before numerous federal courts during the fourteen months in which the C2+ petition has been pending in order to obtain injunctions against small providers of cellular extension phone services -- often after those providers concluded that they did not have the financial ability to engage in protracted litigation with the carriers. See, e.g., Attachment 2, hereto. In at least one case, the Report and Order was used by a cellular carrier as the basis for federal criminal charges under 18 U.S.C. § 1029 against an individual who provided cellular extension services, although trial resulted in acquittal. See Attachment 3, hereto. Now, the carriers are using the Report and Order -- particularly the language purporting to "entitle" them to a monthly recurring revenue stream for every operating cellular telephone, and the gratuitous conclusions concerning C2+ contained in paragraph 62 -- to seek a declaratory judgment from a federal court that C2+ is liable in damages for their "lost" monthly recurring revenues due to their subscribers' use of extension phones. See Attachment 4, hereto. As set forth in the C2+ petition for reconsideration and related filings, any such "lost" revenue to the carriers results from legitimate competition provided by C2+ in the form of extension services used by paying cellular subscribers, not from "fraudulent use of cellular equipment" by unauthorized users who have "tampered with" the ESN in order to bill calls to an unwitting subscriber or to the cellular carrier.

We believe that we have demonstrated to the Commission the substantive merit of the C2+ petition and the need for the Commission to reconsider the Report and Order with respect to cellular extension phones used by legitimate cellular subscribers. The C2+ petition has raised serious legal and policy issues that should not be decided in the first instance by a federal court based on language that never should have been included in the Report and Order in the first place. Consequently, we urge you to expedite the Commission's consideration of the issues raised in the

C2+ petition and related submissions and to affirm the right of a paying cellular subscriber to use non-harmful customer owned equipment to make more convenient use of the cellular service for which the subscriber already is paying. Pursuant to Section 1.1206 of the Commission's Rules, two copies of this letter are being provided to the Secretary's office under separate cover for inclusion in the docket in this proceeding. Thank you for your consideration.

Respectfully,

A handwritten signature in cursive script, reading "Timothy J. Fitzgibbon".

Timothy J. Fitzgibbon  
Counsel for C-Two-Plus Technology, Inc.

cc: Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Blair Levin, Esquire  
Rudolfo M. Baca, Esquire  
Lisa B. Smith, Esquire  
Suzanne Toller, Esquire  
David A. Siddall, Esquire  
Michele Farquhar, Esquire  
Rosalind Allen, Esquire  
David Furth, Esquire  
James W. Olsen, Esquire

## **ATTACHMENT 1**

**FEDERAL COMMUNICATIONS COMMISSION**  
**WIRELESS TELECOMMUNICATIONS BUREAU**  
**Broadband Commercial Radio Branch**



Facsimile Transmission Cover Sheet

Room 644, 1919 M Street NW Washington, DC  
Telephone: Voice (202) 418-1320 Fax 202-418-1412

Date: July 26, 1995

To: Timothy Fitzgibbon

Fax #: 202-898-1521

Contact #: 202-898-1515

From: **Steve Markendorff**

Total Pages 3 including this cover sheet

Message/Special Instructions Attached is a copy of the agenda for the meeting

Thursday, August 27, 1995 at 10:00 AM in Room 847, 2000 M St., NW. You

are reminded that this is a non restricted docketed proceeding and you must submit

the required written memorandum to the Secretary of the FCC in accordance with

Rule Section 1.1206.

**Ex-Parte Presentations  
Addressing Petitions for Reconsideration of  
FCC Rule and Policy on  
Cellular Electronic Serial Numbers  
Adopted in CC Docket No. 92-115**

July 27, 1995

**AGENDA**

**I. Opening Remarks**

A. Welcoming Remarks FCC Staff

B. Introductions Attendees

C. Ground Rules; Limit on Scope of Meeting FCC Staff

1. Topics to Discuss:

a. New Rule Section 22.919 (under reconsideration by FCC)

b. Policy Statement on Altering the ESN of a Cellular Telephone or Knowing Use of a Cellular Telephone with Altered ESN (under reconsideration by FCC)

**II. Rule Section 22.919 - Electronic Serial Numbers**

A. Rule is outgrowth of OET-53, Cellular Compatibility specification; intended to assist in reducing fraud losses of cellular carriers. It sets forth design criteria to be met by manufacturers as a condition of type acceptance of cellular telephones.

B. Issues -

1. Will new Section 22.919 assist in reducing fraud losses of cellular carriers?

2. Is it feasible for manufacturers of cellular telephones to comply with new Section 22.919?

3. Would it be impossible or much more difficult to repair or update cellular telephones that comply with Section 22.919?

III. Policy Statement on Altering ESN or Knowing Use of a Cellular Telephone with Altered ESN; [see Part 22 Rewrite Report and Order, paragraphs 60-62]

A. Policy statement says:

1. Knowing use of a cellular telephone with an altered ESN violates FCC rule (§ 22.377) requiring use of type accepted equipment.
2. Use of equipment that carrier has not authorized for use on its system constitutes violation of Section 301 of Communications Act of 1934, as amended (47 U.S.C. §301).
3. Any individual or company that knowingly alters cellular telephone to cause it to transmit ESN other than the one originally installed by manufacturer is aiding in violation of FCC rules.
4. Use of C2+ altered cellular telephones constitutes a violation of the Communication Act and FCC Rules.

B. Statement is based on following assumptions:

1. Simultaneous use of two or more cellular telephones emitting the same ESN without the licensee's permission could cause problems in some cellular systems such as erroneous tracking or billing.
2. Use of such phones without the licensee's permission could deprive cellular carriers of monthly per telephone revenues to which they are entitled.
3. Use of such phones would not be authorized by the carrier and would, therefore, not fall within the carrier's blanket license, and thus would be unlicensed, violating Section 301 of the Communications Act.

C. Issues -

1. Does simultaneous use of two or more cellular telephones emitting the same ESN cause problems in some cellular systems? Does it make any difference whether the licensee gives permission (i.e., do problems result because the licensee does not know about the cloned telephone or would problems happen anyway)?
2. Do cellular service contracts specify to customers that there would be an additional monthly fee plus airtime charges for additional telephones?
3. Does the typical cellular subscriber agreement authorize the use of only specific equipment, or does it authorize the use of any type accepted equipment the subscriber wishes to employ?



## **ATTACHMENT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HOUSTON CELLULAR  
TELEPHONE COMPANY

V.

JOHN C. NELSON, individually and  
d/b/a both CELL TIME CELLULAR and  
ACTION CELLULAR and DANNY  
HART, individually and d/b/a both  
ACTION CELLULAR and ACTION  
CELLULAR EXTENSION

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C.A. NO.

95-617

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

MAR 1 1995

Michael N. Milby, Clerk

DEMAND FOR TRIAL BY JURY

ORDER

On Houston Cellular Telephone Company's original complaint and request for temporary restraining order, preliminary injunction and permanent injunction, filed on March 1, 1995, the Court finds:

(1) Houston Cellular Telephone Company ("Houston Cellular") is suffering injury from Defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension altering, manipulating, transferring or emulating Electronic Serial Numbers (ESN). This has resulted in an incalculable loss of revenues from, among other things, loss of monthly access and long distance access fees. This injury is irreparable because Houston Cellular has no means of monitoring the use of cellular phones with altered, manipulated, transferred or emulated ESNs, and therefore, has no way to bill for this unauthorized use of a cellular phone.

(2) Houston Cellular can only determine the names of customers using cellular phones with altered, manipulated, transferred or emulated ESNs by review of defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension's records.

(3) Houston Cellular will suffer irreparable harm if the records of defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension are altered or destroyed.

prior to the granting of this temporary restraining order, and therefore, no notice to the defendants of this order was required.

Therefore, it is ordered:

(1) Defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension are enjoined from and shall cease any manipulating, altering, emulating or transferring of ESNs on cellular phones.

(2) Defendants John C. Nelson, individually and d/b/a both Cell Time Cellular and Action Cellular; and Danny Hart, individually and d/b/a both Action Cellular and Action Cellular Extension are further enjoined from and shall cease to alter or destroy any records, defined in its broadest sense to include all ~~written, printed, typed, recorded, or graphic matter of every kind and description, including, drafts, originals and copies, and all attachments and appendices thereto~~ which relate or refer to the altering, manipulating, transferring or emulating of ESNs or the names of individuals and/or entities with cellular phones having altered, manipulated, emulated or transferred ESNs. Without limiting it, the term "records" includes all agreements, contracts, communications, correspondence, letters, telegrams, telexes, messages, memoranda, records, reports, books, summaries, tape recordings or other records of telephone conversations or interviews, summaries or other records of personal conversations, minutes or summaries or other records of meetings and conferences, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, forecasts, statistical data, statistical statements, financial statements, worksheets, workpapers, drafts, grafts, maps, charts, tables, accounts, analytical records, consultants' reports, appraisals, bulletins, brochures, pamphlets, circulars, trade letters, press releases, notes, notices, marginal notations, notebooks, telephone records, bills, statements, records of obligation and expenditure, invoices, lists, journals, advertising, recommendations, print-outs, compilations, tabulations, analyses, studies, surveys, transcripts of hearings, transcripts of testimony, affidavits, expense reports, microfilm, microfiche, articles, speeches, tape or disc recordings, sound re-

cordings, video recordings, film, tape, photographs, punch cards, programs, data compilation from which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, or electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made. The term "records" also includes all copies of documents by whatever means made, except that where a document is identified or produced, identical copies thereof which do not contain any markings, additions, or deletions different from the original need not be separately produced.

(3) The Court orders defendants John C. Nelson, Danny Hart and corporate representatives of Cell Time Cellular, Action Cellular and Action Cellular Extension to produce and U.S. Marshals to seize the following:

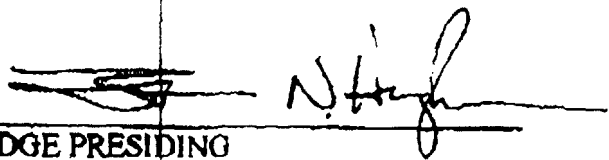
- (a) All lists, files, records or other information containing names, addresses and/or telephone numbers of individuals or entities for whom you altered, transferred, emulated or manipulated the electronic serial number of cellular telephones from January 1, 1990 to the present.
- (b) All advertisements, brochures or other documents which advertised services you provide to the public for altering, transferring, emulating or manipulating the electronic serial number of cellular telephones.
- (c) Documents in your possession which identify other individuals or entities which provide services which alter, transfer, emulate or manipulate the electronic serial numbers of cellular telephones.
- (d) Documents which evidence any previous or current business relationship or dealings with the entity C2+ Technology.
- (e) A complete copy of all data on any storage medium, including paper-based fixed disk data and removable disk data (such as hard drives, removable drives, floppy drives, optical drives, tape drives, and RAM drives). Houston Cellular will reimburse defendants for copying costs incurred in obtaining a hard copy of the foregoing information.

(4) The Court orders John C. Nelson, Danny Hart and corporate representatives of Cell Time Cellular, Action Cellular and Action Cellular Extension to immediately notify, in writing, return receipt requested, any affiliated computer service company of this temporary restraining order.

(5) The Court orders plaintiff Houston Cellular Telephone Company to file with the Court a bond in the amount of \$10,000.00 for the payment of costs and damages as may be incurred or suffered by any party who is found to have been wrongfully restrained.

(6) A temporary injunction hearing is set for Friday, March 3, 1995 beginning at 9:00 a.m., with the hearing to take place in Courtroom 11-C, Floor 11 of the Federal Courthouse located at 515 Rusk, Houston, Texas 77002.

SIGNED this 1<sup>st</sup> day of MARCH, 1995.

  
JUDGE PRESIDING

## 7

7

Michael N. Miloy, Clerk

von von von von von von von von von von von von

CIVIL ACTION | H-95-617

**Defendants.**

GC000209

Federal Register on May 21, 1981 (46 Fed. Reg. 27655) with corrections on June 16, 1981 (46 Fed. Reg. 31417).

5. On September 9, 1994, after notice in the Federal Register, the FCC issued the Revision of Part 22 of the Commission Rules Governing the Public Mobile Services (9 FCC Rcd 6513 (1994)). This FCC order was published in the Federal Register on November 17, 1994 (59 Fed. Reg. 59502).
6. Houston Cellular has suffered irreparable damage as a consequence of defendants' emulation of the electronic serial numbers of cellular telephones for which it is the carrier. The defendants' actions have deprived Houston Cellular of monthly access charges and other per unit charges its customers would owe for additional connections.
7. Although the damage is describable, Houston Cellular cannot reliably quantify it, making the legal remedy inadequate.
8. The acts of the defendants are analogous to their having installed unauthorized access to a cable television network. This piracy injures the utility and its legitimate customers.
9. No unrepresented third-party nor any diffuse public interest is adversely affected by the restrictions this injunction imposes on Nelson and Hart.

B. *Conclusions.*

1. The FCC orders were regularly made, published in the Federal Register, and served on defendants by publication. 5 U.S.C. § 552(a)(1). *See also, Fed. Crop Ins. v. Merrill*, 332 U.S. 380, 384-85 (1947).
2. These orders adopted by the FCC constitute orders within the meaning of § 401(b) (47 U.S.C. § 401(b)) of the Communication Act of 1934.
3. Emulation of the electronic serial numbers of cellular telephones by Nelson, Hart, and Action Cellular Extensions, Inc., violates the two FCC orders.
4. Section 401(b) of the Communication Act of 1934 expressly authorizes injunctive relief for a party injured by disobedience of an FCC order. The prerequisite of irreparable injury need not be established where such injunctive relief is expressly authorized by statute. *United States v. Hayes Int'l Corp.*, 415 F.2d 1038, 1045 (5th Cir. 1969); *Gresham v. Windrush Partners*, 730 F.2d 1417, 1423 (11th Cir. 1984). Although Houston Cellular need only demonstrate that it has been injured to satisfy this standard, having found that it was in fact irreparably injured by defendants' acts and in an amount not susceptible to calculation, the court concludes that injunctive relief is available at common law.

C. *Injunction.*

Based on these findings and conclusions, John C. Nelson, Jr., Daniel K. Hart, and Action Cellular Extensions, Inc., are enjoined permanently from emulating electronic serial numbers of cellular telephones for which Houston Cellular is the carrier.

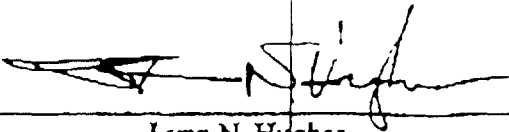
This restriction binds them and all those who may knowingly act in concert with them, including employees, agents, and consumers.

1. Specifically, the defendants are enjoined from altering, transferring, emulating or manipulating electronic serial numbers of cellular telephones for which Houston Cellular is the carrier except in strict compliance with the FCC orders.
2. The defendants shall produce immediately to Houston Cellular these documents, including those seized by the United States Marshal and others in their possession or within their access:
  - A. All lists, files, records, or other information containing names, addresses, or telephone numbers of entities for whom they altered, transferred, emulated, or manipulated the electronic serial numbers of cellular telephones from January 1, 1990, to March 15, 1995.
  - B. All advertisements, brochures, or other documents that advertised services to the public for altering, transferring, emulating, or manipulating the electronic serial numbers of cellular telephones.
  - C. Documents in their possession that identify other entities which offer services to alter, transfer, emulate or manipulate the electronic serial numbers of cellular telephones.
  - D. Documents evincing a business relation or transaction with Technology, Inc.
  - E. A complete copy of all data on any storage medium, including paper-based, fixed-disk, and removable-disk data (hard, removable, floppy, optical, and tape drives and RAM). Houston Cellular will reimburse the defendants for copying costs incurred in producing a hard copy.
3. With the exception of Houston Cellular subscribers' service orders or contracts, the defendants are entitled to retain the originals of those documents, providing Houston Cellular with photocopies. The defendants may retain photocopies of the Houston Cellular subscribers' service orders or contracts only for the purpose of assisting in re-emulation. The defendants will surrender to Houston Cellular all photocopies at the completion of the re-emulation or upon written request of Houston Cellular.



4. This order does not require that the defendants produce C2+ Technology, Inc., proprietary information, equipment, or accessories in any form.
5. This is a final judgment. The court retains jurisdiction to enforce the injunction and the settlement from which it arose.

Signed March 15, 1995, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lynn N. Hughes", is written over a horizontal line.

Lynn N. Hughes  
United States District Judge

GC000212

JUDGE, UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

11

AO 72A  
Rev. 8/82)

AO 450 (Rev. 5/85) Judgment in a Civil Case •

ORIGINAL

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

United States District Court

DEC 29 11 42 AM '95

SOUTHERN

DISTRICT OF

GEORGIA

CLERK *A. Taylor*  
SO. DIST. GE.

PALMER WIRELESS, INC., d/b/a CELLULAR  
ONE and GEORGIA R.S.A. #12  
PARTNERSHIP, d/b/a ALLTEL MOBILE

JUDGMENT IN A CIVIL CASE

v.

FRANCES E. ("BUNNY") MARSHALL  
and MARSHLAND COMMUNICATIONS, INC.

CASE NUMBER: CV295-201

- ☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ **Decision by Court.** This action came <sup>by</sup> ~~to trial or~~ hearing before the Court. The issues have been ~~tried or~~ heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with the Order of the Court entered December 29, 1995, granting the Plaintiffs' motion for injunctive relief, judgment is hereby entered in favor of the Plaintiffs, PALMER WIRELESS, d/b/a CELLULAR ONE and GEORGIA R.S.A. #12 PARTNERSHIP, INC., d/b/a ALLTEL MOBILE, and against the Defendants, FRANCES E. ("BUNNY") MARSHALL and MARSHLAND COMMUNICATIONS, INC., and that the Plaintiffs do have and recover Costs of Court in their behalf expended, such Costs to be taxed by the Clerk.

**E. O. D.**

12-29-95  
DATE

DATE  
slt  
INITIALS

December 29, 1995  
Date

HENRY R. CRUMLEY, JR.  
Clerk

Henry Taylor  
(By) Deputy Clerk

JAN-02-1996 13:29

P.02

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION

PALMER WIRELESS, INC.,  
d/b/a CELLULAR ONE, and  
GEORGIA R.S.A. #12  
PARTNERSHIP, d/b/a Alltel  
Mobile,

Plaintiffs,

vs.

FRANCES E. ("BUNNY")  
MARSHALL, and MARSHLAND  
COMMUNICATIONS, INC.,

Defendants.

CIVIL ACTION

NO. CV295-201

FILED  
U.S. DISTRICT COURT  
BRUNSWICK, GA  
DEC 29 10 32 AM '95  
CLERK - J. Taylor  
SO. DIST. OF GA.

ORDER

Upon the Court's findings of fact and conclusions of law on Plaintiffs' prayer for injunction relief, entered on this date,

**IT IS ORDERED** that:

1. Defendants' altering, transferring, emulating or manipulating ESNs is a violation of the FCC's ESN orders and regulations, and such violation aids and assists others in violating the FCC's ESN orders and regulations.

2. Marshall, Marshland and their officers, agents, servants, employees, and those persons or entities in active participation with them who received actual

notice of this order, are hereby permanently enjoined from altering, transferring, emulating or manipulating the ESNs of cellular telephones.

3. Defendants are ordered to maintain all records, computer disks, and other information concerning altered telephones in their current state.

4. Defendants shall produce any and all records, computer disks, and other documentation or information relating to the altering, transferring, emulating or manipulating of cellular telephones, the servicing of clients, and responses to inquiries about altering, transferring, emulating, or manipulating the ESNs of cellular telephones to Plaintiffs within ten days of the date of this order.

5. Defendants shall promptly provide to Plaintiffs information, not contained in written records produced to Plaintiffs, concerning Defendants' altering, transferring, emulating or manipulating ESNs, including, but not limited to, the identity of all customers who have had cellular telephones altered, transferred, emulated or manipulated by Defendants, and monies received for said services.

6. Plaintiffs shall recover their costs from Defendants.

7. Final Judgment is entered accordingly.

SO ORDERED, this 24<sup>th</sup> day of December, 1995.

  
JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION

FILED  
U.S. DIST. COURT  
BRUNSWICK DIV.

JAN 23 31 PM '96

PALMER WIRELESS, INC.,  
d/b/a CELLULAR ONE, and  
GEORGIA R.S.A. #12  
PARTNERSHIP, d/b/a Alltel  
Mobile,

CIVIL ACTION

CLERK  
SO. DIST. OF GA.

Plaintiffs,

vs.

FRANCES E. ("BUNNY")  
MARSHALL, and MARSHLAND  
COMMUNICATIONS, INC.,

Defendants.


NO. CV295-201

**AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**ENTERED ON DECEMBER 29, 1995**

The findings of fact and conclusions of law, entered on December 29, 1995, are amended by the following:

Conclusion of Law Number Twelve, reciting that Defendants violated 18 U.S.C. § 1029 is withdrawn. That statute requires a specific intent to defraud. To the contrary, Defendants' actions were open and notorious and evidenced no intentional fraudulent conduct. The Court concludes that Defendants did not knowingly violate 18 U.S.C. § 1029.

SO ORDERED, this 2<sup>nd</sup> day of January, 1996.

  
JUDGE, UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

## **ATTACHMENT 3**

# United States District Court

EASTERN

DISTRICT OF  
LEXINGTON

KENTUCKY

UNITED STATES OF AMERICA  
V.

## SUMMONS IN A CRIMINAL CASE

DON YATES  
923 Jairus Road  
Lexington, KY 40505


CASE NUMBER: 95-5108M

(Name and Address of Defendant)

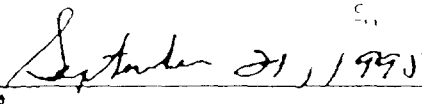
YOU ARE HEREBY SUMMONED to appear before the United States District Court at the place, date and time set forth below.

Place	United States Courthouse 101 Barr Street Lexington, KY	Room	Courtroom C Fourth Floor
Before:	Magistrate Judge James B. Todd	Date and Time	September 29, 1995 9:00 a.m.

To answer a(n)

☐ Indictment    ☐ Information    ☒ Complaint    ☐ Violation Notice    ☐ Probation Violation Petition
Charging you with a violation of Title 18 United States Code, Section(s) 1029Brief description of offense: possession and trafficking in device making equipment
  
 Signature of Issuing Officer

James B. Todd, U.S. Magistrate Judge  
 Name and Title of Issuing Officer

  
 Date

 RECEIVED  
 UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF  
 KENTUCKY  
 SEP 21 PM 4:38



# United States District Court

Eastern DISTRICT OF Kentucky  
Lexington

Eastern District of Kentucky  
FILED  
SEP 21 1995  
JAMES B. TODD  
U.S. MAGISTRATE JUDGE

UNITED STATES OF AMERICA  
v.

## CRIMINAL COMPLAINT

Don Yates  
923 Jairus Road  
Lexington, Kentucky 40505

CASE NUMBER: 95-5108M

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about 9/18/95 in Fayette county, in the

Eastern District of Kentucky defendant(s) did, (Track Statutory Language of Offense)

did knowingly and with intent to defraud, produce, use and traffic in one or more counterfeit access devices; knowingly and with intent to defraud, produce, traffic in, had control and custody of, and possessed device-making equipment; and knowingly and with intent to defraud had custody, control and possession of hardware used for altering and modifying telecommunications instruments to obtain unauthorized access to telecommunications services; all affecting interstate and foreign commerce.

in violation of Title 18 United States Code, Section(s) 1029 (a)(1), (a)(4), (a)(6)(B)

I further state that I am a(n) Special Agent - USSS <sup>On-duty</sup> and that this complaint is based on the following

facts: (See Attached Affidavit of SA James W. Cobb)

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Signature of Complainant James W. Cobb  
U.S. Secret Service

Sworn to before me and subscribed in my presence,

Date September 21, 1995

at Lexington, Kentucky  
City and State

Name & Title of Judicial Officer  
James B. Todd  
U.S. Magistrate Judge

Signature of Judicial Officer